

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
SAN FRANCISCO DIVISION OF JUDGES

WYNN LAS VEGAS, LLC

and

KELI P. MAY, an Individual

Case No. 28-CA-155984

and

KANIE KASTROLL, an Individual

Case No. 28-CA-157203

RESPONDENT WYNN LAS VEGAS, LLC'S RESPONSE TO THE ADMINISTRATIVE  
LAW JUDGES'S NOTICE TO SHOW CAUSE

In response to the Notice to Show Cause issued by Administrative Law Judge Gerald M. Etchingham ("ALJ") in the above-captioned cases on September 16, 2019, Respondent Wynn Las Vegas, LLC ("Wynn" or "Respondent"), by and through its counsel of record, the law firm of Kamer Zucker Abbott, submits the following position statement.

**I. THE NEED FOR ADDITIONAL EVIDENCE.**

**A. *The Keli May Discipline and Related Rule.***

The discipline of Keli P. May was predicated, in part, on the analysis of the lawfulness of specific work rules. Additionally, as set forth *infra*, Counsel for the General Counsel ("General Counsel") has moved to withdraw allegations that certain work rules are facially unlawful. Accordingly, to the extent the ALJ's decision relies upon the lawfulness of the work rules in question, Respondent respectfully requests that the ALJ review and amend his decision as necessary. On the other hand, during the underlying hearing in this matter, the parties presented extensive evidence regarding the lawfulness of the discipline issued to Keli May. Accordingly, Respondent does not believe that the presentation of additional evidence as to Ms. May's discipline is necessary.

***B. The Withdrawal of Certain Work Rules from the Consolidated Complaint.***

The General Counsel recently filed a motion to withdraw the following allegations currently before the ALJ on remand:

- Respondent maintained facially unlawful rules requiring employees to display appropriate behavior at work, refrain from on-duty and off-duty misconduct and inappropriate conduct or horseplay (Complaint at ¶ 5(a)(1));
- Respondent maintained facially unlawful rules prohibiting photographing and recording in the work place (Complaint at ¶ 5(a)(2), (3), and (4)); and
- Respondent maintained facially unlawful rules prohibiting the use of company logos (Complaint at ¶ 5(a)(3)).

On October 11, 2019, the ALJ granted General Counsel's motion to withdraw. Consequently, in view of the withdrawal of those allegations, no additional evidence needs to be presented on those work rules.

***C. The Remaining Work Rules.***

The lawfulness of the following work rules, in whole or in part, remains disputed by the parties:

- Only using the facilities for the property you are scheduled to work, with the exception of the employee dining area.
  - When scheduled to work at Wynn you must park in the employee parking garage and utilize the back of the house area that pertains to and is exclusive to the property at which you are working with the exception of the employee dining area [...]
- Never Using personal communications devices such as beepers, cellular telephones and personal data assistance ("PDAs"), for incoming and outgoing messaging or calls while on duty, unless prior authorization is obtained from a department manager.
- Except for off duty or pre-authorized use of personal communications devices for incoming and outgoing messaging or calls only, never using any device for audio, video or data recording/transmission, such as video and digital cameras, camera and recording components of cellular telephones/PDAs and digital recorders, at anytime while on company property or while performing job duties

off-company property, unless prior authorization is obtained from a department manager for a company business purpose.

(Complaint at ¶ 5(a)(3)).

Respondent maintains that these rules are valid of their face and there is no allegation that they have been unlawfully applied. Indeed, while the ALJ took only limited evidence as to Wynn's justification for its work rules, the evidence entered in the record clearly supports that Wynn's work rules are lawful under the standards set forth in *Boeing Co.*, 365 NLRB No. 154 (2017). Nevertheless, Wynn requests the opportunity to provide additional evidence regarding the justification and business necessity for the foregoing rules.

**II. THE AMOUNT OF TIME NEEDED TO PRESENT ADDITIONAL EVIDENCE.**

Given the limited number of work rules that remain in dispute, Respondent anticipates that the parties would need one hearing day to present evidence, including direct and cross-examinations of any witness(es). Wynn anticipates calling two witnesses from its operations to testify regarding the business necessity of the work rules in question.

**III. RESPONDENT'S AVAILABILITY FOR HEARING.**

Respondent would be available for hearing on the following days between November 12, 2019 and January 31, 2020:

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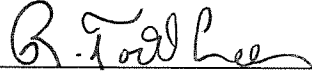
- January 8, 9, 13, 14, 15, 16, 20, 21, 22, 27, 28, 29, 30.

DATED this 11<sup>th</sup> day of October, 2019.

Respectfully submitted,

KAMER ZUCKER ABBOTT

By:



Gregory J. Kamer, Esq.

Nevada Bar No. 0270

R. Todd Creer, Esq.

Nevada Bar No. 8033

3000 West Charleston Boulevard, Suite 3

Las Vegas, Nevada 89102

Tel: (702) 259-8640

Fax: (702) 259-8646

Attorneys for Respondent

Wynn Las Vegas, LLC

**CERTIFICATE OF SERVICE**

I hereby certify that on October 11, 2019, I did serve a copy of the foregoing  
**RESPONDENT WYNN LAS VEGAS, LLC'S RESPONSE TO THE ADMINISTRATIVE  
LAW JUDGES'S NOTICE TO SHOW CAUSE** upon:

The Honorable Gerald M. Etchingham  
Division of Judges  
National Labor Relations Board  
901 Market Street, Suite 485  
San Francisco, California 94103

**VIA ELECTRONIC FILING**

Julia M. Durkin, Esq., Field Attorney  
National Labor Relations Board  
Byron Rogers Federal Office Building  
1961 Stout Street, Suite 13-103  
Denver, Colorado 80294  
Julia.Durkin@nrlrb.gov

**VIA ELECTRONIC MAIL AND  
U.S. MAIL**

Ms. Keli May  
10213 Quaint Tree Street  
Las Vegas, Nevada 89183-4252  
kaimanalasvegas@yahoo.com

**VIA ELECTRONIC MAIL AND  
U.S. MAIL**

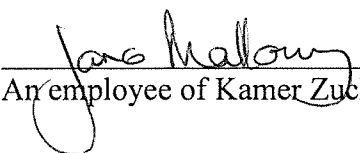
Ms. Kanie Kastroll  
8593 Peaceful Dreams Street  
Las Vegas, Nevada 89139-7051  
Kanie.kastroll@cox.net

**VIA ELECTRONIC MAIL AND  
U.S. MAIL**

Cynthia Falls, President  
Transport Workers Union of America, Local 721  
2770 South Maryland Parkway, Suite 313  
Las Vegas, Nevada 89109  
cynthiafalls@gmail.com

**VIA ELECTRONIC MAIL AND  
U.S. MAIL**

By:

  
An employee of Kamer Zucker Abbott